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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Policies and Rules )  
Concerning Toll Fraud )

CC Docket No. 93-292

JOINT COMMENTS OF WILTEL, INC.  
AND WILTEL COMMUNICATIONS SYSTEMS, INC.

WilTel, Inc. and WilTel Communications Systems, Inc. (collectively, "WilTel"), by their attorneys and pursuant to the Commission's Notice of Proposed Rulemaking ("Notice"),<sup>1</sup> respectfully submit the following comments in the above-captioned proceeding. WilTel, Inc. is an interexchange telecommunications common carrier. WilTel Communications Systems, Inc. is an affiliate of WilTel, Inc. that provides customer premises equipment and telecommunications software.

I. INTRODUCTION

WilTel applauds the Commission's efforts to develop a comprehensive policy to aid in the detection and prevention of toll fraud and to increase consumer awareness of the risks of toll fraud. The best way to reduce such criminal activity is to place the cost of fraud with the party best able to prevent its occurrence. In that way, the party with the greatest

<sup>1</sup>FCC 93-494, released December 2, 1993.

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ability to prevent the loss has the financial incentive to do so. As the Commission has recognized, "control over the use of telecommunications services has increasingly shifted from carriers to individual customers."<sup>2</sup> Thus, unless a vendor or carrier has contractually assumed the risk, the customer should bear responsibility when fraud occurs.

WilTel recognizes that the customer will be able to take steps to prevent fraud only if it is aware of the risks and knowledgeable of the steps that can be taken to prevent fraud from occurring. Thus, WilTel supports efforts by the Commission to increase consumer awareness.

## **II. THE COMMISSION SHOULD NOT ARBITRARILY PLACE FINANCIAL RESPONSIBILITY FOR TOLL FRAUD ON CARRIERS OR EQUIPMENT PROVIDERS**

Toll fraud is often perpetrated by sophisticated criminals. However, as the panelists from the En Banc Hearing on Toll Fraud emphasized, "effective approaches now exist to battle toll fraud."<sup>3</sup> Placing the financial burden of fraud on those best able to prevent and detect it provides the only assurance that such measures will be adopted. In PBX fraud situations, the customer is the party with the ability to prevent fraud from occurring. As the owner or lessee of the equipment, the customer owns and controls the access codes

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<sup>2</sup>Notice, ¶ 3.

<sup>3</sup>Notice, ¶ 11.

necessary to prevent the fraud by programming, configuring, disabling remote access features, or installing adequate security or monitoring procedures. It would be contrary to the public interest for the Commission to adopt a policy of placing liability, other than the liability which may arise under the relevant principles of tort and contract law, on the carrier or the PBX vendor or manufacturer. This approach would do nothing to prevent toll fraud from occurring in the future. If the customer, who has the ability to control the system, bears no responsibility when fraud occurs, it will not take the steps necessary to prevent fraud from occurring.

Additionally, if the Commission arbitrarily places liability on carriers or equipment vendors or manufacturers, these parties will be forced to pass the cost of toll fraud to their customers. Customers who take preventative steps would subsidize those who failed to do so. In many cases there is a tradeoff between convenience and security. One business may prefer to allow its employees unrestricted access to "convenient, productive and money-saving applications" that unfortunately "are breeding ground for hackers."<sup>4</sup> To prevent fraud, a more cautious business may elect to use aggressive products that, while causing some inconvenience, verify the identity of those seeking access to PBX or voice mail

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<sup>4</sup>Barbara Herman & Thomas K. Crowe, A Call to Arms: Only You Can Prevent Toll Fraud, Teleconnect, Jan. 1993, at 69.

features.<sup>5</sup> Neither economic efficiency nor basic fairness would be served by forcing the second user to subsidize the losses incurred by the first.

As the Commission states in the Notice, its goal continues to be to work with consumers and the industry to find solutions to each fraud problem without hindering the development of new technologies.<sup>6</sup> If the Commission arbitrarily places liability on carriers or equipment providers without considering which party is best able to prevent toll fraud, it risks hindering the development of new technologies that may have tremendous public benefits but that may also subject the carrier or vendor to liability for fraud it cannot control.

### **III. THE COMMISSION SHOULD NOT REQUIRE CARRIERS OR CPE PROVIDERS TO PROVIDE TOLL FRAUD DETECTION OR PREVENTION DEVICES OR SERVICES**

WilTel disagrees with suggestions that the Commission should require interexchange carriers to provide toll fraud prevention or detection services as part of the basic service package.<sup>7</sup> Similarly, the Commission should not amend its rules to require equipment vendors to implement specific

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<sup>5</sup>See id.

<sup>6</sup>Notice, ¶ 5.

<sup>7</sup>See e.g., Notice, ¶ 18.

hardware and software functions to help to prevent toll fraud.<sup>8</sup> These approaches ultimately pass the cost of the devices and services to all consumers rather than just those who desire the services.

Customers who desire to purchase such protection will have such an option, not because of government fiat but as a result of market forces. Thus, failure to offer services limiting customers' exposure to toll fraud is not an unreasonable practice. Further, the Commission should not require equipment vendors to implement specific hardware and software functions to help prevent toll fraud. Customers should have the responsibility to weigh the risks of fraud and the choice whether or not to purchase toll fraud protection.

#### **IV. THE COMMISSION SHOULD ALLOW MARKET FORCES TO ALLOCATE THE RISK OF TOLL FRAUD**

The Commission's ultimate goal in this proceeding should be to reduce the incidence of toll fraud. Such fraud can be reduced if parties utilize measures currently available.<sup>9</sup> Allowing parties to make appropriate choices voluntarily is the best way to ensure that parties will act efficiently. This allows parties to allocate risks pursuant to market forces and in accordance with the customer's willingness to trade the risk of bearing more toll fraud liability for a

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<sup>8</sup>Notice, ¶ 19.

<sup>9</sup>Notice, ¶ 11.

lower price. Accordingly, vendors of customer premises equipment ("CPE") or carriers can contract to accept more risk in exchange for receiving a premium for their products or services. A vendor or carrier that decides not to offer risk-reduction alternatives will lose risk-averse customers who are willing to pay such a premium.

Allowing market forces to allocate risks permits buyers and sellers to satisfy their needs efficiently. If a carrier can most effectively reduce a certain type of fraud, such forces will cause carriers to assume the responsibility at the lowest total cost to the public. Where a CPE vendor or end user can most efficiently combat fraud, that role will be allocated to them through market pricing signals. The party who has contracted to accept the toll fraud risk will take steps to reduce the likelihood of its occurrence. Thus, the free market approach fairly allocates the risk of toll fraud while furthering the Commission's goal of reducing its occurrence.

Industry experience illustrates how competitive forces create solutions to the toll fraud problem. "[C]arriers have responded with a wave of security products and services."<sup>10</sup> These programs offer customers the opportunity to substantially reduce their risks. However, "[a]lthough carriers offer remedies for toll fraud, some

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<sup>10</sup>Dan O'Shea, Security Products Abound, but Is Toll Fraud Too Tough?, Telephony, Aug. 30, 1993, at 7.

telecommunications customers fail to recognize the danger."<sup>11</sup> Among users large enough to require PBX equipment, the problem is not so much lack of information as a belief that "it can't happen to me."<sup>12</sup> Dozens of articles in publications such as Communications Week, Computerworld, Network World, Telecommunications Products & Technology Magazine, Teleconnect and Telephony<sup>13</sup> have provided telecommunications managers information on how fraud is committed and how it can be combatted.

#### V. STEPS THE COMMISSION SHOULD TAKE TO PREVENT TOLL FRAUD

Only where there are market imperfections should the Commission take action which interferes with the parties' freedom to allocate risks. Because existing precautions are not being implemented fully, some customers apparently do not have adequate information to encourage them to take necessary

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<sup>11</sup>Id.

<sup>12</sup>Cf. id. (discussing attitude of some telecommunications customers).

<sup>13</sup>See, e.g., Communications Week, April 5, 1993, at 37 (describing report for sale by consulting firm that "outlines the most common toll-fraud methods and suggests ways to guard against them"); Computerworld, March 22, 1993, at 77 (describing methods of combatting fraud and listing companies providing toll fraud insurance and others offering fraud prevention products); Network World, Feb. 22, 1993, at 23 (describing series of conferences on toll fraud prevention); Telecommunications Products & Technology Magazine, May 1992, at 34 (describing ways of securing voice mail systems from fraud); Teleconnect, Aug. 1993, at 36 (listing steps to eliminate 95% of fraud); and Telephony, Aug. 30, 1993, at 7 (describing services offered by carriers to combat toll fraud).

preventative measures. As the Commission has noted,<sup>14</sup> "[i]f customers are unaware of potential liability, they are unlikely to take steps to limit their exposure." The solution to this minor market imperfection, i.e., inadequate consumer education, is not for the Commission to artificially allocate toll fraud risk but to ensure that customers are properly informed. Increased customer education will allow the market to properly allocate toll fraud risk.

Educated customers will also be better able to utilize the tools they already possess to prevent and detect fraud. Customers should be educated about the specific steps they should take to prevent and detect fraud.

To ensure that customers receive adequate warnings, the Commission could implement rules requiring carriers and PBX vendors to provide copies of the Commission's most recent toll fraud Consumer Alert at no cost to customers requesting it or to take other steps to notify end-users. However, the Commission should give carriers and CPE providers extensive latitude to determine the most effective means to warn their customers. Different types of communication will be appropriate for different carriers, CPE providers, and types of customers. The Commission should not risk undermining the effectiveness of the efforts to warn customers by proscribing specific methods of and intervals for warnings.

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<sup>14</sup>Notice, ¶ 24.



In addition to encouraging customer education, the Commission should not lose sight of the fact that toll fraud is a crime. Ultimately, the best way to prevent fraud is to locate and prosecute the criminals who commit the fraud. WillTel urges the Commission "to join with law enforcement authorities in encouraging Congress to enact legislation that clearly defines and penalizes this criminal activity."<sup>15</sup> Further, the Commission could encourage federal law enforcement officials to establish a toll-free hotline which would give consumers and carriers an expeditious means to report fraud or suspected fraud. This would provide information to law enforcement officials quickly and would facilitate criminal investigations. These and other measures aimed at prosecuting criminals will go furthest in achieving the Commission's goal of detecting and preventing toll fraud.

## VI. CONCLUSION

As the Commission has noted, customers have increased control over the use of telecommunications services. Since customers are best able to detect and prevent fraud, customers should bear the financial responsibility when fraud occurs unless a supplier has contractually agreed to bear those risks. The Commission should refrain from allocating the risk of toll fraud but should instead rely on market forces to

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<sup>15</sup>Notice, ¶ 13.

efficiently allocate risk and to encourage parties to take steps to prevent fraud. The party contractually accepting the risk will thus have the incentive to implement preventive measures, including purchasing detection and prevention devices. To ensure that customers have the information necessary to take appropriate action, the Commission should take steps to increase customer awareness of toll fraud. Finally, the Commission should work with Congress and law enforcement officials to fight toll fraud at its source: the criminal.

Respectfully submitted,  
**WILTEL, INC. AND WILTEL  
COMMUNICATIONS SYSTEMS, INC.**

January 14, 1994

/s/ Shawna L. Barnard

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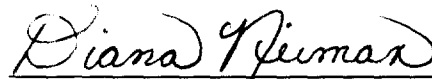
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## CERTIFICATE OF SERVICE

I, Diana Neiman, hereby certify that copies of the foregoing **"Joint Comments of WilTel, Inc. and WilTel Communications Systems, Inc."** regarding Policies and Rules Concerning Toll Fraud, CC Docket No. 93-292, were served by hand upon the parties appearing on the attached service list January 14, 1994.

A handwritten signature in cursive script that reads "Diana Neiman". The signature is written in dark ink and is positioned above a horizontal line.

Diana Neiman

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